

(4) the level of rates of pay will be maintained so as to attract and retain qualified prevailing rate employees.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 564.)

#### PRIOR PROVISIONS

A prior section 5341, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471; Pub. L. 90-83, §1(97), Sept. 11, 1967, 81 Stat. 220; Pub. L. 90-560, §4, Oct. 12, 1968, 82 Stat. 997, provided prevailing rate system for trades and crafts and is covered by sections 5343(c), (d) and 5349(a) of this title.

#### EFFECTIVE DATE

Section 15(a) of Pub. L. 92-392 provided that: "The provisions of this Act [enacting this subchapter and section 5550 of this title, amending sections 2105, 5337, 5541, 5544, 5548, 6101, 7154, and 8704 of this title, repealing section 6102 of this title, and enacting provisions set out as notes under sections 5341 and 5343 of this title and sections 60a-1 and 60a-2 of Title 2, The Congress] are effective on the first day of the first applicable pay period which begins on or after the ninetieth day after the date of enactment of this Act [Aug. 19, 1972], except that, in the case of those employees referred to in section 5342(a)(2)(B) and (C) of title 5, United States Code (as amended by the first section of this Act), such provisions are effective on the first day of the first applicable pay period which begins on or after the one hundred and eightieth day after such date of enactment or on such earlier date (not earlier than the ninetieth day after such date of enactment) as the Civil Service Commission may prescribe. Notwithstanding the provisions of this subsection, section 5343(e)(1)(D) and (E) and (e)(2)(C), as enacted by the first section of this Act, shall not be effective until the first day of the first pay period commencing after (1) the date on which the President ceases to exercise his authority under the Economic Stabilization Act of 1970 [formerly set out as a note under section 1904 of Title 12, Banks and Banking] to stabilize wages and salaries, or (2) April 30, 1973, whichever occurs first."

#### REPEALS

Section 13 of Pub. L. 92-392 provided that:  
 "(a) All laws or parts of laws inconsistent with this Act [see Effective Date note above] are hereby repealed to the extent of such inconsistency.

"(b) Subsection (a) of this section does not repeal or otherwise affect section 5102(d) of title 5, United States Code, section 305 of title 44 of such Code, or the provisions contained in section 180 of former title 31, United States Code."

#### § 5342. Definitions; application

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency; but does not include—

- (A) a Government controlled corporation;
- (B) the Tennessee Valley Authority;
- (C) the Virgin Islands Corporation;
- (D) the Atomic Energy Commission;
- (E) the Central Intelligence Agency;
- (F) the National Security Agency, Department of Defense;

(G) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title;

(H) the Government Accountability Office; or<sup>1</sup>

(J)<sup>2</sup> the Defense Intelligence Agency, Department of Defense; or

(K) the National Geospatial-Intelligence Agency, Department of Defense;

(2) "prevailing rate employee" means—

(A) an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement;

(B) an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement; and

(C) an employee of the Veterans' Canteen Service, Department of Veterans Affairs, excepted from chapter 51 of this title by section 5102 (c)(14) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or labor experience and knowledge as the paramount requirement; and

(3) "position" means the work, consisting of duties and responsibilities, assignable to a prevailing rate employee.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, this subchapter applies to all prevailing rate employees and positions in or under an agency.

(2) This subchapter does not apply to employees and positions described by section 5102(c) of this title other than by—

(A) paragraph (7) of that section to the extent that such paragraph (7) applies to employees and positions other than employees and positions of the Bureau of Engraving and Printing; and

(B) paragraph (14) of that section.

(3) This subchapter, except section 5348, does not apply to officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title.

(c) Each prevailing rate employee employed within any of the several States or the District of Columbia shall be a United States citizen or a bona fide resident of one of the several States or the District of Columbia unless the Secretary of Labor certifies that no United States citizen or bona fide resident of one of the several States or the District of Columbia is available to fill the particular position.

(Added Pub. L. 92-392, §1(a), Aug. 19, 1972, 86 Stat. 564; amended Pub. L. 96-70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-191, §8(d), Feb. 15, 1980, 94 Stat. 33; Pub. L. 97-468, title VI, §615(b)(1)(D), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98-618, title V, §502(b), Nov. 8,

<sup>1</sup> So in original. The word "or" probably should not appear.

<sup>2</sup> So in original. Subsec. (a)(1) does not contain a subpar. (I).

1984, 98 Stat. 3303; Pub. L. 102-54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 103-359, title V, §501(h), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 104-201, div. A, title XI, §1122(a)(1), div. C, title XXXV, §3548(a)(3)(A), Sept. 23, 1996, 110 Stat. 2687, 2868; Pub. L. 108-136, div. A, title IX, §921(g), Nov. 24, 2003, 117 Stat. 1570; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

#### PRIOR PROVISIONS

A prior section 5342, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471, provided for crews of vessels.

Provisions similar to those comprising subsec. (b) of this section were contained in Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471 (formerly classified to section 5342 of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92-392.

#### AMENDMENTS

2004—Subsec. (a)(1)(H). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

2003—Subsec. (a)(1)(K). Pub. L. 108-136 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

1996—Subsec. (a)(1). Pub. L. 104-201, §3548(a)(3)(A), which directed amendment of subsec. (a)(1) by striking subpar. (G) and redesignating subpars. (H), (I), (J), (K), and (L) as (G), (H), (I), (J), and (K), respectively, was executed by striking subpar. (F), relating to the Panama Canal Commission, and redesignating subpars. (G), (H), (I), (K), and (L) as (F), (G), (H), (J), and (K), respectively, to reflect the probable intent of Congress, because subsec. (a)(1) does not contain a subpar. (J) and the amendments were included in a series of conforming amendments relating to the Panama Canal.

Subsec. (a)(1)(L). Pub. L. 104-201, §1122(a)(1), substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

1994—Subsec. (a)(1)(J) to (L). Pub. L. 103-359 directed the amendment of subpar. (J) by striking out “or” at end which could not be executed because par. (I) does not contain a subpar. (J), added “or” at end of subpar. (K), and added subpar. (L).

1991—Subsec. (a)(2)(C). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1984—Subsec. (a)(1)(I) to (K). Pub. L. 98-618 struck out “or” at end of subpar. (I), inserted “or” at end of subpar. (J), and added subpar. (K).

1983—Subsec. (a)(1)(C) to (J). Pub. L. 97-468, eff. Jan. 5, 1985, struck out subpar. (C) which excluded the Alaska Railroad and redesignated subpars. (D) to (J) as (C) to (I), respectively. See Effective Date of 1983 Amendment note below.

1980—Subsec. (a)(1)(J). Pub. L. 96-191 added subpar. (J).

1979—Subsec. (a)(1)(G). Pub. L. 96-70 substituted “Commission” for “Company”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1122(a)(1) of Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96-191.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective

Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

#### EFFECTIVE DATE

Section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, except that in the case of employees referred to in subsec. (a)(2)(B) and (C) section effective on first day of first applicable pay period beginning on or after 180th day after Aug. 19, 1972, or on such earlier date (not earlier than 90th day after Aug. 19, 1972) as Civil Service Commission may prescribe, see section 15(a) of Pub. L. 92-392, set out as a note under section 5341 of this title.

#### ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

#### DISSOLUTION OF VIRGIN ISLANDS CORPORATION

Virgin Islands Corporation established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97-357, title III, §308(e), Oct. 19, 1982, 96 Stat. 1710.

### § 5343. Prevailing rate determinations; wage schedules; night differentials

(a) The pay of prevailing rate employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided by section 206(a)(1) of title 29. To carry out this subsection—

(1) the Office of Personnel Management shall define, as appropriate—

(A) with respect to prevailing rate employees other than prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

(i) individual local wage areas for prevailing rate employees having regular wage schedules and rates; and

(ii) wage areas for prevailing rate employees having special wage schedules and rates;

(B) with respect to prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

(i) individual local wage areas for prevailing rate employees under such paragraphs having regular wage schedules and rates (but such boundaries shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed); and

(ii) wage areas for prevailing rate employees under such paragraphs having special wage schedules and rates;

(2) the Office of Personnel Management shall designate a lead agency for each wage area;

(3) subject to paragraph (5) of this subsection, and subsections (c)(1)–(3) and (d) of this section, a lead agency shall conduct wage surveys, analyze wage survey data, and develop and establish appropriate wage schedules and rates for prevailing rate employees;